

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ORACLE AMERICA, INC.,

No. C 10-03561 WHA

Plaintiff,

v.

GOOGLE INC.,

**PROPOSED JURY
INSTRUCTION**

Defendant.

To head off potential confusion and speculation by the jury, the Court seeks the guidance of counsel on the statement below (for the jury). Please meet and confer and discuss on Friday morning.

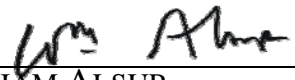
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You have already heard from a witness that we have already had one trial in this case. That was in 2012. The jury found that Google infringed Sun/Oracle's copyright by using the declaring code and structure, sequence, and organization of the 37 APIs subject only to further determination whether or not the use was a fair use, which determination was not made one way or the other. The jury rejected Oracle's claim that Google infringed its copyrights in the specification documentation for the 37 APIs and also rejected Oracle's claim that Google infringed various patents held by Oracle. The trial judge held, however, that the declaring lines of code and their structure, sequence, and organization were not copyrightable under the Copyright Act. On appeal, the Court of Appeals for the Federal Circuit disagreed with regard to

1 copyrightability and held that the declaring lines of code and their structure, sequence, and
2 organization were copyrightable and sent the case back here for this trial on fair use and,
3 depending on that verdict, for damages and other relief. This is the trial we are now having. So
4 as this case comes to us now, it is a given as a matter of law that the declaring lines of code and
5 their structure, sequence, and organization of the 37 APIs are copyrightable and thus subject to
6 protection under the law subject only to the right of fair use if it applies. And it is a given that
7 Android used the declaring code and structure, sequence, and organization of the 37 APIs.
8 From time to time you will hear testimony from the prior trial and this will count as evidence,
9 just as evidence presented here counts as evidence.

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11 **IT IS SO ORDERED.**

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13 Dated: May 11, 2016.

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16 WILLIAM ALSUP
17 UNITED STATES DISTRICT JUDGE
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